

ACT #2019- 400

1 SB404
2 201605-4
3 By Senators Smitherman and Waggoner
4 RFD: Tourism
5 First Read: 14-MAY-19



1 SB404

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4 ENROLLED, An Act,

5 Relating to alcoholic beverages; to amend Section
6 28-4A-3, Code of Alabama 1975; to permit a small manufacturer
7 of beer to have a financial interest in a brewpub under
8 certain conditions; and to amend Sections 28-3A-6, as last
9 amended by Act 2018-447, 2018 Regular Session, and 28-4A-4,
10 Code of Alabama 1975; to provide that the privilege or excise
11 tax on beer is levied at the time the beer is allocated by the
12 brewery or brewpub for the purpose of retail sale before being
13 dispensed for consumption.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 28-4A-3, Code of Alabama 1975, is
16 amended to read as follows:

17 "§28-4A-3.

18 "(a) In addition to the licenses authorized to be
19 issued and renewed by the board pursuant to the Alcoholic
20 Beverage Licensing Code codified as Chapter 3A of this title,
21 the board, upon applicant's compliance with ~~the provisions of~~
22 this chapter, and with Chapter 3A and the regulations made
23 rules adopted thereunder, and the conditions set forth in
24 subsection (b), is authorized to may issue to a qualified

1 applicant a brewpub license which shall authorize the licensee
2 to ~~manufacture~~ do all of the following:

3 "(1) Manufacture or brew beer, in a quantity not to
4 exceed 10,000 barrels in any one year and to sell beer brewed
5 on the licensed premises in unpackaged form at retail for
6 on-premises consumption at the licensed premises only. ~~to~~
7 ~~sell~~

8 "(2) Sell beer brewed on the licensed premises in
9 packaged form at retail for off-premises consumption, provided
10 the beer sold for off-premises consumption may not exceed 288
11 ounces per customer per day and shall be sealed, labeled,
12 packaged, and taxed in accordance with state and federal laws
13 and regulations. ~~to sell~~

14 "(3) Sell beer brewed on the premises in original,
15 unopened barrel or keg containers to any licensed wholesaler
16 designated by a brewpub licensee pursuant to Sections 28-8-2
17 and 28-9-3 for resale to retail licensees. ~~to donate~~

18 "(4) Donate and deliver up to two kegs of the
19 licensee's beer to a licensed charitable special event
20 operated by or on behalf of a nonprofit organization;
21 provided, however, donations shall be taxed in accordance with
22 state and federal laws and regulations, and any beer remaining
23 at the conclusion of the charitable event shall be returned to
24 the manufacturer for disposal. ~~and to purchase~~

1 "(5) Purchase beer, including draft or keg beer, in
2 original, unopened containers from licensed wholesalers and to
3 sell such beer at retail for on-premises consumption only, in
4 a room or rooms or place on the licensed premises at all times
5 accessible to the use and accommodation of the general
6 public.7

7 "(b) A brewpub is subject to all of the following
8 conditions:

9 "(1) The proposed location of the premises shall
10 not, at the time of the original application, be prohibited by
11 a valid zoning ordinance or other ordinance in the valid
12 exercise of police power by the governing body of the
13 municipality or county in which the brewpub is located.

14 "(2) Beer brewed by the brewpub licensee shall be
15 packaged or contained in barrels from which the beer is to be
16 dispensed only on the premises where brewed for consumption on
17 the premises or sold in original, unopened barrel or keg
18 containers to any designated wholesaler licensee for resale to
19 retailer licensees.

20 "(3) The brewpub must contain and operate a
21 restaurant or otherwise provide food for consumption on the
22 premises.

23 "(4) The brewpub may not sell any alcoholic
24 beverages if it is not actively and continuously engaged in

1 the manufacture or brewing of alcoholic beverages on the
2 brewpub's licensed premises.

3 ~~"(b)(c)~~ The annual license fee levied and prescribed
4 for a license as a brewpub issued or renewed by the board
5 ~~pursuant to the authority of this chapter~~ is one thousand
6 dollars (\$1,000).

7 "(d) A manufacturer that sells, on an annual basis,
8 an amount equal to no more than 60,000 barrels of beer, may
9 have a financial interest in a brewpub, including a brewpub
10 that also has a restaurant retail license, provided the
11 manufacturer may not transfer alcoholic beverages directly
12 from the manufacturer to the brewpub but may purchase
13 alcoholic beverages from an authorized wholesaler or as
14 otherwise provided by law, and may not have a financial
15 interest in any retailer other than a brewpub.

16 ~~"(c)(e) Except as provided in this subsection, the~~
17 ~~provisions of this title shall be applicable. The provisions~~
18 ~~of Section 28-3-4 and subsection (b) of Section 28-3A-6, shall~~
19 ~~not be applicable with regard to beer brewed by the brewpub~~
20 ~~either of the following and sold and dispensed on the brewpub~~
21 ~~premises: In all other respects, Section 28-3-4, Section~~
22 ~~28-3A-6(b), and Section 28-3A-6(i)(2) shall be applicable.~~

23 "(1) The brewpub.

24 "(2) A manufacturer described in, and in compliance
25 with, subsection (d)."

1 Section 2. Sections 28-3A-6, as last amended by Act
2 2018-447, 2018 Regular Session, and 28-4A-4, Code of Alabama
3 1975, are amended to read as follows:

4 "§28-3A-6.

5 "(a) Upon applicant's compliance with the provisions
6 of this chapter and the regulations made thereunder, the board
7 shall issue to applicant a manufacturer license which shall
8 authorize the licensee to manufacture or otherwise distill,
9 produce, ferment, brew, bottle, rectify, or compound alcoholic
10 beverages within this state or for sale or distribution within
11 this state. No person shall manufacture or otherwise distill,
12 produce, ferment, brew, bottle, rectify or compound alcoholic
13 beverages within this state or for sale or distribution within
14 this state or to the state, the board, or any licensee of the
15 board, unless such person or the authorized representative of
16 the person shall be granted a manufacturer license issued by
17 the board.

18 "(b) No manufacturer licensee shall sell any
19 alcoholic beverages direct to any retailer or for consumption
20 on the premises where sold except as specified under
21 subsection (h), nor sell or deliver any such alcoholic
22 beverages in other than original containers approved as to
23 capacity by the board and in accordance with standards of fill
24 prescribed by the U. S. Treasury Department, nor maintain or
25 operate within the state any place or places, other than the

1 place or places covered by the manufacturer license, where
2 alcoholic beverages are sold or where orders are taken.

3 "(c) Each manufacturer licensee shall be required to
4 file with the board, prior to making any sales in Alabama a
5 list of its labels to be sold in Alabama and shall file with
6 the board its federal certificate of label approvals or its
7 certificates of exemption as required by the U. S. Treasury
8 Department. All liquors and wines whose labels have not been
9 registered as herein provided for shall be considered
10 contraband and may be seized by the board or its agents, or
11 any peace officer of the State of Alabama without a warrant
12 and the goods shall be delivered to the board and disposed of
13 as provided by law.

14 "(d) All such manufacturer licensees shall be
15 required to mail to the board prior to the twentieth day of
16 each month a consolidated report of all shipments of alcoholic
17 beverages made to each wholesaler during the preceding month.
18 Such reports shall be in such form and containing such
19 information as the board may prescribe.

20 "(e) Every manufacturer shall keep at its principal
21 place of business within the state, daily permanent records
22 which shall show the quantities of raw materials received and
23 used in the manufacture of alcoholic beverages, and the
24 quantities of alcoholic beverages manufactured and stored, the
25 sale of alcoholic beverages, the quantities of alcoholic

1 beverages stored for hire or transported for hire by or for
2 the licensee and the names and addresses of the purchasers or
3 other recipients thereof.

4 "(f) Every place licensed as a manufacturer shall be
5 subject to inspection by members of the board or by persons
6 duly authorized and designated by the board at any and all
7 times of the day or night as they may deem necessary, for the
8 detection of violations of this chapter, of any law, or of the
9 rules and regulations of the board, or for the purpose of
10 ascertaining the correctness of the records required to be
11 kept by the licensees. The books and records of such licensees
12 shall, at all times, be open to inspection by members of the
13 board, or by persons duly authorized and designated by the
14 board. Members of the board and its duly authorized agents
15 shall have the right, without hindrance, to enter any place
16 which is subject to inspection hereunder, or any place where
17 such records are kept for the purpose of making such
18 inspections and making transcripts thereof.

19 "(g) Licenses issued under this section shall,
20 unless revoked in the manner provided in this chapter, be
21 valid for the license year commencing January 1 of each year.

22 "(h) (1) A manufacturer licensee actively and
23 continuously engaged in the manufacture of alcoholic beverages
24 on the manufacturer's licensed premises in the state may
25 conduct tastings or samplings on the licensed premises, as

1 regulated by the board except as to quantity and hours of
2 operation, or as otherwise provided by statute, and for that
3 purpose give away or sell alcoholic beverages manufactured
4 there for consumption on only one premises where manufactured.
5 All alcoholic beverages manufactured and retained on the
6 manufacturer's licensed premises for tasting or sampling shall
7 remain on the premises and be dispensed from a barrel or keg
8 or other original containers.

9 "(2) Notwithstanding subdivision (1), a manufacturer
10 licensee engaged in the manufacture of less than 60,000
11 barrels of beer per year may sell at retail on its licensed
12 premises in the state, for off-premises consumption, beer
13 produced at that licensed premises; provided, however, beer
14 sold for off-premises consumption: May not exceed 288 ounces
15 per customer per day; may not be produced pursuant to a
16 contract with another manufacturer; and shall be sealed,
17 labeled, packaged, and taxed in accordance with state and
18 federal laws and regulations. For purposes of this
19 subdivision, beer produced by a parent, subsidiary, or
20 affiliate of the licensee, or by a contract brewery,
21 regardless of where the beer is produced, shall be included
22 for purposes of calculating the 60,000 barrel limit.

23 "(3) A manufacturer licensee engaged in the
24 manufacture of liquor on the manufacturer's licensed premises
25 in the state may sell at retail on its licensed premises, for

1 off-premises consumption, liquor manufactured at that licensed
2 premises; provided, however, liquor sold for off-premises
3 consumption may not exceed 2.25 liters per customer per day
4 and shall be sealed, labeled, packaged, and taxed in
5 accordance with state and federal laws and regulations. The
6 manufacturer licensee shall keep and maintain records for
7 three years of all sales for off-premises consumption.

8 "(4) Notwithstanding subdivision (1), the board may
9 grant a permit allowing a manufacturer licensee engaged in the
10 manufacture of less than 50,000 gallons of table wine per year
11 in the state to establish and operate one additional off-site
12 tasting room to be used to conduct tastings or samplings and
13 to sell at retail the licensee's table wine. The board may
14 also grant a single permit allowing an association
15 representing the majority of wineries and grape growers in the
16 state to establish and operate one off-site tasting room to be
17 used to conduct tastings and samplings and to sell at retail
18 table wines produced by wine manufacturer licensees in the
19 state. An applicant for an off-site tasting room permit shall
20 file a written application with the board in such form and
21 containing such information as the board may prescribe, along
22 with proof of consent and approval from the appropriate
23 governing authority in which the off-site tasting room is to
24 be located and a filing fee of fifty dollars (\$50). All state
25 and federal laws and regulations applicable to on-site tasting

1 rooms shall apply to an off-site tasting room. Wine sold at an
2 off-site tasting room for off-premises consumption may not
3 exceed one case of wine per customer per day. For purposes of
4 this subdivision, one case of wine means the equivalent of
5 twelve 750-milliliter bottles of wine.

6 "(i) (1) In addition to the licenses provided for by
7 Chapter 3A of this title, and any county or municipal license,
8 there is levied on the manufacturer of the alcoholic beverages
9 dispensed on the premises the privilege or excise tax imposed
10 on beer by Sections 28-3-184 and 28-3-190; and imposed on
11 table wine by Section 28-7-18; and imposed on liquor by
12 Sections 28-3-200 to 28-3-205, inclusive. Taxes on beer shall
13 be levied at the time the beer is allocated by the beer
14 manufacturer for the purpose of retail sale and not at the
15 time the beer is dispensed for consumption. Every manufacturer
16 licensee shall file the tax returns, pay the taxes, and
17 perform all obligations imposed on wholesalers at the times
18 and places set forth therein. It shall be unlawful for any
19 manufacturer licensee who is required to pay the taxes so
20 imposed in the first instance to fail or refuse to add to the
21 sale price and collect from the purchaser the required amount
22 of tax, it being the intent and purpose of this provision that
23 each of the taxes levied is in fact a tax on the consumer,
24 with the manufacturer licensee who pays the tax in the first
25 instance acting merely as an agent of the state for the

1 collection and payment of the tax levied by Section 28-3-184;
2 as an agent for the county or municipality for the collection
3 and payment of the tax levied by Section 28-3-190; as an agent
4 for the county or municipality for collection and payment of
5 the tax levied by Section 28-7-18; and as an agent for the
6 state for collection and payment of the tax levied by Sections
7 28-3-200 to 28-3-205, inclusive.

8 "(2) The manufacturer licensee shall keep and
9 maintain all records required to be kept and maintained by
10 manufacturer, wholesaler, and retailer licensees for the tax
11 so levied except that manufacturers are not required to
12 maintain name, address, or other personal demographic
13 information for sales as provided in subsection (h).

14 "(j) A manufacturer licensee engaged in the
15 manufacture of beer in the state may donate and deliver up to
16 31 gallons of the manufacturer's beer to a licensed nonprofit
17 special event operated by or on behalf of a nonprofit
18 organization. Donations shall be taxed in accordance with
19 state and federal laws and regulations. Any beer remaining at
20 the conclusion of the nonprofit event shall be returned to the
21 manufacturer for disposal.

22 "(k) A manufacturer licensee engaged in the
23 manufacture of table wine in the state may donate and deliver
24 up to two cases of the manufacturer's table wine to a licensed
25 nonprofit special event operated by or on behalf of a

1 nonprofit organization. Donations shall be taxed in accordance
2 with state and federal laws and regulations. Any table wine
3 remaining at the conclusion of the nonprofit event shall be
4 returned to the manufacturer for disposal.

5 "§28-4A-4.

6 "(a) In addition to the licenses provided for by
7 this chapter and any county or municipal license, there is
8 levied on the brewpub for on-premises sales of beer brewed by
9 the brewpub licensee the privilege or excise taxes imposed by
10 Sections 28-3-184 and 28-3-190. Every brewpub licensee shall
11 file the tax returns, pay the taxes and perform all
12 obligations imposed on wholesalers at the times and places set
13 forth therein. It shall be unlawful for any brewpub licensee
14 who is required to pay the taxes so imposed in the first
15 instance to fail or refuse to add to the sales price and
16 collect from the purchaser the required amount of tax, it
17 being the intent and purpose of this provision that each of
18 the taxes levied is in fact a tax on the consumer, with the
19 brewpub licensee who pays the tax in the first instance acting
20 merely as an agent of the state for the collection and payment
21 of the tax levied by Section 28-3-184 and as an agent of the
22 county or municipality for the collection and payment of the
23 tax levied by Section 28-3-190. Taxes on beer shall be levied
24 at the time the beer is allocated for the purpose of retail

1 sale and not at the time the beer is dispensed for
2 consumption.

3 "(b) The brewpub shall be required to keep and
4 maintain all of the records otherwise required to be kept and
5 maintained by manufacturer, wholesaler, and retailer
6 licensees.

7 "(c) The brewpub shall appoint a licensed wholesaler
8 designee in order to preserve Section 28-9-1. In addition, for
9 on-premises sales of beer brewed by the brewpub licensee, the
10 brewpub shall be exempt from Sections 28-9-3 through 28-9-11."

11 Section 3. This act shall become effective on the
12 first day of the third month following its passage and
13 approval by the Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate



Speaker of the House of Representatives

SB404

Senate 16-MAY-19

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 28-MAY-19

Senate concurred in House amendment 29-MAY-19

APPROVED 6/6/19

By: Senator Smitherman

TIME 9:10am


GOVERNOR

Alison Secretary of State

Act Number: 2019-003
Bill Number: SB-404

Rec'd 06/06/19 11:00am MW

HOUSE ACTION
(Continued)

HOUSE OF REPRESENTATIVES
R. 3 at length and passed

Years 17 Nays 4 Abs 17

Date 5-28-19

J. S. WOODARD
JEFF WOODARD, Clerk